No. 91-1186

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1991

JAMES ROWLAND, et al.,

Petitioners,

v.

CALIFORNIA MEN'S COLONY, UNIT II MEN'S ADVISORY COUNCIL,

Respondent.

On Writ Of Certiorari
To The United States Court of Appeals
For The Ninth Circuit

BRIEF FOR RESPONDENT

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QUESTION PRESENTED FOR REVIEW

Was the court of appeals correct in concluding that 28 U.S.C. § 1915(a), which permits a "person" to litigate as an indigent, authorizes indigent associations to proceed *in forma pauperis*, given that 1 U.S.C. § 1 expressly defines "person" to include associations and there is no indication that Congress intended to deviate from this standard statutory definition?

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STATUTES INVOLVED

This case involves the construction of 28 U.S.C. § 1915(a). As explained in this Brief, this Court must employ 1 U.S.C. § 1 to construe § 1915. Portions of these two statutes are contained in the Petitioners' Brief on the Merits at page 2. The statutes are reprinted in full in the Appendix to this Brief.

STATEMENT OF THE CASE

The Men's Advisory Council is an association of state prison inmates incarcerated in Unit II of the California Men's Colony, West Facility. Complaint, p. 4, ¶ 7; ER. 4.[1]

The association was formed by inmates, acting at the behest of the Warden. *Id.* As described in Warden's General Order Number 38, which authorized the Men's Advisory Council, the Warden sought an organization that would (1) "promote the welfare of the inmates through their duly elected representatives," (2) give inmates "representation and a voice in administrative deliberations and decisions affecting the welfare and best interests of all inmates," and (3) provide the Warden with a means to communicate administrative decisions to inmates. *Id.* The members of the Men's Advisory Council are elected from the general prison population. *Id.*

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[1] On March 23, 1992, the Court granted the Petitioners' Motion to Dispense With Printing the Joint Appendix. Citations in this Brief are to the titles and pages of the pleadings in the district court. The district court pleadings were also reproduced in the Excerpts of Record in the court of appeals. "ER. ___" refers to the Excerpts of Record, at page ___.

For many years, the State has provided tobacco to indigent inmates. *Id.*, p. 6, ¶ 16; ER. 6. In June, 1989, the California Department of Corrections abandoned its tobacco program. *Id.*, pp. 6-7, ¶¶ 18-19; ER. 6-7. The Men's Advisory Council pursued several administrative appeals to overturn the new policy. The appeals were denied. *Id.* (Exhibit A), pp. 17-22, ER. 17-22.

Serving as a "voice" for the inmates (*id.*, p. 2; ER. 2),[2] the Men's Advisory Council attempted to file a Complaint alleging civil rights violations. *Id.*; ER. 1. The Complaint named as defendants the Warden, the Director of the California Department of Corrections, and other state officials. *Id.*, p. 5, ¶¶ 8-13; ER. 5. As described in the Complaint, the defendants violated the Eighth and Fourteenth Amendment rights of inmates in the institution. *Id.*, pp. 11-13, ¶¶ 28-34; ER. 11-13. The Men's Advisory Council did not request monetary damages, but sought only declaratory and injunctive relief. *Id.*, p. 14, ¶¶ 1-5; ER. 14. The Council also sought an order to prevent any reprisals for the filing of the lawsuit. *Id.*, p. 14, ¶ 5; ER. 14.

Along with the Complaint, the Men's Advisory Council filed a Motion for Leave to Proceed *In Forma*

[2] This is not the first time that the Men's Advisory Council at the California Men's Colony has participated in litigation as a "voice" for inmates. In *Dohner v. McCarthy*, 635 F. Supp. 408, 417 (C.D. Cal. 1985), the district court noted that "[inmates'] input through the Men's Advisory Council and the Litigation Team managing this action has clearly been responsible, significant and appropriate."

Pauperis. Motion; ER. 41-45. The Motion was accompanied by an Affidavit executed by the Council's Chairman, William Cochran. Motion; ER. 43-45. As explained in the Motion, the Men's Advisory Council has neither "funds nor an account established . . . to pay costs or give security to proceed with this action, but believes that [it is] entitled to the redress sought." *Id.*, p. 2; ER. 43. In his Affidavit, Mr. Cochran stated that there is "NO ACCOUNT FOR UNIT II MEN'S ADVISORY COUNCIL PER INSTRUCTION OF WARDEN." Motion, p. 3, ¶ 1b, ER. 44 (capitals in original).[3]

A United States Magistrate-Judge recommended that the *in forma pauperis* motion be denied, due to an "[i]nadequate showing of indigency." Order Re Leave To File Action Without Prepayment of Fees; ER. 46 (the Order is reprinted in Petitioners' Supplemental Appendix, at B-1). The district court followed the recommendation and denied the motion. *Id.*

Mr. Cochran, as Chairman of the Men's Advisory Council, asked the district court to reconsider the denial. Request [For] Reconsideration Of Denial To Proceed In Forma Pauperis; ER. 47-49. In the request, Mr. Cochran explained that the Council was established by the Warden and "represents the entire inmate population on UNIT II." *Id.*, p. 1, ER. 47. He cited case authority for the

[3] The State asserts that Mr. Cochran's Affidavit "was a statement of Cochran's poverty." *See* Petitioners' Brief on the Merits, p. 6. A fair reading of the Motion and Affidavit shows that Mr. Cochran alleged that the *Council* was without funds. He also explained that the *Council* was indigent because of the actions of one of the defendants, the Warden of the institution.

proposition that organizations can sue *in forma pauperis*. *Id.*, p. 2; ER. 48. He wrote that "the Warden has already stated that [the Council] is not allowed to have an account. Which [sic] precludes any fund raisers, or donations of money or any other asset which can be liquidated for costs to proceed with the prosecution of this matter." *Id.* Mr. Cochran also attached a memorandum from prison staff stating that the Council does not "and will not" have an account. *Id.*, p. 3; ER. 49. The district court denied the request for reconsideration, but stated that Mr. Cochran could submit "details of each individual's indigency." Order Denying Request For Reconsideration Of Denial To Proceed In Forma Pauperis; ER. 50 (the Order is reprinted in Petitioners' Supplemental Appendix at B-2).

The Men's Advisory Council appealed the denial of the *in forma pauperis* motion. Notice of Appeal; ER. 51.[4] The court of appeals instructed the parties to address the threshold question of whether 28 U.S.C. § 1915(a), which permits a "person" to litigate as an indigent, authorizes an organization to proceed *in forma pauperis*. *California Men's Colony, Unit II, Men's Advisory Council v. Rowland*, No. 90-55600, slip op. at 9492 n.1, 9493-94 (9th Cir. 1991). Following briefing and argument, the court held that "associations are 'persons' within the meaning of 28 U.S.C. § 1915(a), and hence that they may proceed in forma pauperis." *Id.* at 9500 (the court of appeals opinion, authored by Judge Charles E. Wiggins, is reprinted in the Appendix to the Petition For Writ of Certiorari).

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[4] The court of appeals requested that present counsel represent the Men's Advisory Council, pursuant to 28 U.S.C. § 1915(d). The court also granted the Council's motion for leave to appeal *in forma pauperis*, so that the issues on appeal could be resolved.

The court of appeals determined that the plain meaning of § 1915(a), when read with 1 U.S.C. § 1, permits associations to proceed *in forma pauperis*. *Id.* at 9495. The plain meaning may only be disregarded, the court noted, where there is a " 'clearly expressed legislative intention' contrary to that plain meaning." *Id.* at 9498 (quoting *Immigration and Naturalization Service v. Cardoza-Fonseca*, 480 U.S. 421, 432 n.12 (1987)). The Ninth Circuit rejected the State's legislative history argument, finding no evidence of any legislative intention contrary to the statute's plain meaning. *Id.* at 9496-98.

Because the Men's Advisory Council is prohibited by the defendants from maintaining any assets, the court of appeals determined that the Council had conclusively established its own indigency. *Id.* at 9499. "[N]ot only is the [Council] indigent, but that state of affairs is clearly not due to any effort on the part of its members to obtain the benefits of litigation without bearing the ordinary financial burdens." *Id.* The court therefore reversed the decision below and remanded the case so that the Men's Advisory Council could proceed *in forma pauperis*. *Id.* at 9500.

The State subsequently petitioned the court of appeals for rehearing and suggested a rehearing *en banc*. No judge requested a vote on the suggestion. Order, filed December 5, 1991 (the Order is reprinted in the Petitioners' Supplemental Appendix at B-3). The petition was denied and the suggestion was rejected. *Id.* The State then sought review in this Court.

SUMMARY OF ARGUMENT

This case presents a straightforward issue of statutory construction. A federal statute, 28 U.S.C. § 1915(a), states that an indigent "person" may proceed *in forma pauperis*. The term "person," while not defined in § 1915(a) itself, is defined in 1 U.S.C. § 1. According to § 1, "person" includes associations. Section 1915(a), when construed with § 1, unambiguously permits an association to proceed *in forma pauperis*. The only real question before this Court is whether the definition of "person" in § 1, a federal statute, is authoritative, or whether the Court may instead define "person" by referring to other, non-statutory sources.

As explained in Part I of the Argument, § 1 provides a mandatory definition of the term "person." When Congress enacted the present version of § 1915(a), the § 1 definition of "person" was already law. Congress defined "person" in the dictionary statute, § 1, so that it would not need to redefine the term with the passage of every new law. When Congress wants to enact a law with a different meaning of "person" than is contained in § 1, Congress expressly says so in the context of the new legislation. This Court has therefore held that the dictionary statute definition of person is mandatory and not merely permissive.

The State's construction of § 1915(a) rests exclusively upon its interpretation of the legislative history of the statute. This mode of analysis, however, is entirely at odds with established principles of statutory construction. " 'The starting point in statutory interpretation is

"the language [of the statute] itself." ' " *Ardestani v. Immigration and Naturalization Service*, ___ U.S. ___, 112 S.Ct. 515, 519 (1991) (quoting *United States v. James*, 478 U.S. 597, 604 (1986) and *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 756 (1975) (Powell, J., concurring)). Thus, an inquiry into the legislative history is not the first step in statutory interpretation; it is the last. And where the language of a statute is clear, it is inappropriate to review the legislative history at all.

In this case, the statutory language unambiguously states that indigent associations are permitted to proceed *in forma pauperis*. For this reason alone, the State's reliance upon the legislative history is misplaced. Moreover, even if this Court examines the legislative history, the history is silent on the question of whether indigent organizations can seek *in forma pauperis* status. Consequently, the legislative history does not provide any evidence that the clear statutory language is contrary to Congress' intent.

There is an additional reason to reject the State's construction of the statute. The State's construction would impermissibly burden the First Amendment rights of members of the Men's Advisory Council. Council members have a right to associate for the purposes of litigation, and denying permission to the Men's Advisory Council to proceed *in forma pauperis* infringes that right. It is well settled that statutes should be construed, whenever possible, to avoid raising serious constitutional questions.

The State also asks this Court to deny associations the ability to proceed *in forma pauperis* because of policy concerns. Part II of the Argument explains that the policy

concerns advanced by the State are insubstantial and, in any event, fail as a matter of law. Policy reasons cannot and do not provide any basis for a court to disregard the unambiguous language of a statute.

ARGUMENT

I. Section 1915(a) Plainly Permits Indigent Associations To Proceed *In Forma Pauperis*.

A. The unambiguous language of section 1915(a) provides that associations may sue *in forma pauperis*.

The court of appeals correctly concluded that 28 U.S.C. § 1915(a), when read in light of 1 U.S.C. § 1, is clear and unambiguous. Section 1915 provides, in relevant part:

> Any court of the United States may authorize the commencement . . . of any suit, . . . without prepayment of fees and costs or security therefor, by a *person* who makes affidavit that he is unable to pay such costs or give security therefor.

28 U.S.C. § 1915(a) (emphasis added; § 1915 is reprinted in full in the Appendix to this Brief). "Person" is, in turn, defined in 1 U.S.C. § 1. That section, which defines words used throughout the United States Code, states in relevant part:

> In determining the meaning of any Act of Congress, unless the context indicates otherwise – . . . . the words *"person"* and "whoever" *include* corporations, companies, *associations*, firms, partnerships, societies, and joint stock companies, as well as individuals.

1 U.S.C. § 1 (emphasis added; § 1 is reprinted in full in the Appendix to this Brief). The court of appeals correctly ruled that, when these two statutes are read together as required, § 1915 unambiguously permits organizations to proceed *in forma pauperis*.[5]

.There is no question that § 1915(a) must be construed in light of § 1. Section 1 is more than an informal guide to

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[5] The court of appeals was persuaded by the views expressed by Judge Bazelon in *S.O.U.P., Inc. v. Federal Trade Commission*, 449 F.2d 1142, 1143 (D.C. Cir. 1971) (Bazelon, C.J., dissenting). In that case, a private non-profit corporation was denied permission to proceed *in forma pauperis*. Dissenting, Judge Bazelon discussed the mandatory rule of § 1. He determined that corporations may proceed *in forma pauperis*, and he would have found that S.O.U.P. was indigent under § 1915. *Id.* at 1144-45 (Bazelon, C.J., dissenting).

Two other courts agree with Judge Bazelon and the court of appeals' decision in this case. *See Harlem River Consumers Cooperative v. Associated Grocers of Harlem*, 71 F.R.D. 93 (S.D.N.Y 1976) (permitting a non-profit corporation to proceed *in forma pauperis*, and holding that § 1915 should be read in light of the definitions set forth in 1 U.S.C. § 1); *River Valley, Inc. v. Dubuque County*, 63 F.R.D. 123 (N.D. Iowa 1974) (same).

The Ninth Circuit's ruling is at odds with the decision of one other circuit court. *See FDM Manufacturing Co., Inc. v. Scottsdale Insurance Co.*, 855 F.2d 213 (5th Cir. 1988) (holding that the legislative history to § 1915(a) establishes that a corporation may not sue *in forma pauperis*). Contrary to the State's claims (*see* Petitioners' Brief on the Merits, p. 13), the majority in *S.O.U.P.* never reached the issue in this case. The majority assumed, *arguendo*, that a corporation could sue *in forma pauperis*, but denied permission to S.O.U.P. based on the financial data that it submitted. *S.O.U.P.*, 449 F.2d at 1142.

statutory construction. Section 1 is a federal statute and, like any other federal statute, it must be enforced. Although the Supreme Court has never authoritatively construed the word "person" in § 1915(a),[6] this Court has held that "dictionary statutes," such as § 1, provide definitions that must be applied to other statutes.

The most extensive discussion of this principle is in *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658 (1978). In that case, this Court considered the effect of the Act of February 25, 1871 (the "Dictionary Act"), which was the forerunner to 1 U.S.C. § 1. The Act was on the books when 42 U.S.C. § 1983, the statute construed in *Monell*, was enacted. At that time, the Dictionary Act provided:

> [I]n all acts hereafter passed . . . the word "person" may extend and be applied to bodies politic and corporate . . . unless the context shows that such words were intended to be used in a more limited sense.

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[6] This Court has never expressly decided whether "person" in § 1915(a) includes corporations or associations. Without any explanation for its rulings, this Court has both granted and denied permission to artificial entities to proceed *in forma pauperis*. *Compare Model Cities Policy Board of Ann Arbor v. Lynn, Sec'y of Housing and Urban Development*, 411 U.S. 979 (1973) (granting motion) *with Schreibman v. Walter E. Heller & Co.*, 440 U.S. 931 (1979) (denying motion); *National Indian Youth Council v. Bruce*, 415 U.S. 946 (1974) (same); *Association For The Preservation Of Freedom Of Choice, Inc. v. Nation Co.*, 375 U.S. 899 (1963) (denying motion by 6-3 vote). More recently, and again without explanation, this Court has apparently adopted a policy preventing artifical entities from filing *in forma pauperis* motions in this Court. *See* R. Stern, E. Gressman and S. Shapiro, *Supreme Court Practice* 429-30 (6th ed. 1986).

Act of Feb. 25, 1871, § 2, 16 Stat. 431. In *Monell*, this Court rejected an argument that the Dictionary Act merely *permitted* the word "person" to include "bodies politic and corporate." Instead, "a mandatory use of the extended meanings of the words defined by the Act is . . . required for it to perform its intended function – to be a guide to 'rules of construction' of Acts of Congress." *Id.* at 689 n.53 (citation omitted). As this Court reasoned, "[w]ere the defined words 'allowable, [but] not mandatory' constructions . . . , there would be no 'rules' at all. Instead, Congress must have intended the definitions of the Act to apply across-the-board except where the Act by its terms called for a deviation. . . . " *Id.* (citation omitted).

Monell does not stand alone. This Court has repeatedly employed the terms in § 1 as mandatory definitions. In *Wilson v. Omaha Indian Tribe*, 442 U.S. 653 (1979), for example, the Court construed 25 U.S.C. § 194. That statute provides that in certain property disputes between a Native American and a "white person," the burden of proof rests upon the "white person." The Court applied § 1 and held that "white person" includes artificial entities as well as individuals. *Id.* at 666-67.[7] Similarly, in *United States v. A & P Trucking Co.*, 358 U.S. 121 (1958), the Court held that partnerships could be held criminally liable under former 18 U.S.C. § 835, which permitted the

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[7] The *Wilson* Court utilized § 1 to interpret § 194 even though, as one justice later commented, "virtually every time we construe the word 'person' to include corporate or other artificial entities that are not individual, flesh-and-blood persons, some awkwardness results." *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 83 (1989) (Brennan, J., dissenting).

government to prosecute "whoever" violated certain interstate commerce regulations. "Whoever" is defined along with "person" in § 1 to include partnerships. Section 835, the Court held, "must be read" in light of § 1. *A & P Trucking*, 358 U.S. at 123. *See also United States v. United Mine Workers*, 330 U.S. 258, 275 (1947) ("person," in Norris-LaGuardia Act, does not include sovereign, because the Dictionary Act definition does not include the government); *United States v. Union Supply Co.*, 215 U.S. 50, 54-55 (1909) (citing Dictionary Act and holding that "any person" in a criminal statute includes corporations).[8]

There are several reasons why Congress chose to define "person" in 1 U.S.C. § 1. Placing the definition in a single place in the United States Code makes it simpler for Congress to draft other statutes. As the court of appeals noted in this case, "Congress chose to codify the canons of statutory construction in 1 U.S.C. § 1 . . . so that it would be unnecessary to repeat these common principles of interpretation each time it enacts or amends a statute." *Men's Advisory Council*, slip op. at 9498.[9]

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[8] Other "dictionary statute" definitions have been routinely applied. *See Barr v. United States*, 324 U.S. 83, 91 (1945) (reading statute in light of rule, set forth in § 1, that words importing the singular include the plural); *United States v. Oregon and California R. Co.*, 164 U.S. 526, 541 (1896) (same); *cf. Norton v. Warner*, 321 U.S. 565, 571 (1944) (applying definition of "vessel" contained in 1 U.S.C. § 3); *Ellis v. United States*, 206 U.S. 246, 259 (1907) (same).

[9] The court of appeals opinion was written by Judge Charles E. Wiggins, who served in the Congress from 1967 to

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Moreover, "it [has long been] well understood that corporations should be treated as natural persons for virtually all purposes of constitutional and statutory analysis." *Monell*, 436 U.S. at 687.[10] Thus, defining "person" to include associations and corporations establishes a default rule that reaches the correct result in the overwhelming majority of cases. It also represents a statement by Congress that, in most circumstances, individuals and all others included in the § 1 definition of "person" have similar rights and responsibilities under the law.

This Court must presume that Congress had § 1 in mind when it added the word "person" to § 1915(a). *See*

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1979. Felix Frankfurter expressed Judge Wiggins' sentiments another way: "Sometimes Congress supplies its own dictionary. It did so in 1871 in [the Dictionary Act by] defining a limited number of words for use as to all future enactments." Frankfurter, *Some Reflections On The Reading Of Statutes*, 47 Colum. L. Rev. 527, 536 (1947).

[10] *See, e.g., First National Bank of Boston v. Bellotti*, 435 U.S. 765, 784 (1978) (First Amendment freedom of speech extends to corporations); *United States v. Martin Linen Supply Co.*, 430 U.S. 564 (1977) (Fifth Amendment Double Jeopardy Clause applies to companies); *G.M. Leasing Corp. v. United States*, 429 U.S. 338, 353 (1977) (corporations are among the people protected against unreasonable searches and seizures under the Fourth Amendment); *Silverthorne Lumber Co., Inc. v. United States*, 251 U.S. 385, 392 (1920) (same); *Santa Clara County v. Southern Pacific Railroad Co.*, 118 U.S. 394, 396 (1886) (corporations are "persons" within the meaning of the Fourteenth Amendment Due Process Clause); *United States v. Amedy*, 11 Wheat. 392, 410-13 (1826) (a business, whether or not incorporated, is a "person" within the meaning of a statute making it a crime to destroy a vessel that has an insurance policy underwritten by a "person"); *American Socialist Society v. United States*, 266 F. 212, 123 (2d Cir.) ("whoever," in criminal statute, includes a society), *cert. denied*, 254 U.S. 637 (1920).

Miles v. Apex Marine Corp., ___ U.S. ___, 111 S.Ct. 317, 325 (1990) ("[w]e assume that Congress is aware of existing law when it passes legislation"); *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 184-85 (1988) (same); *Cannon v. University of Chicago*, 441 U.S. 677, 696-98 (1979) (same). In 1948, Congress enacted the current § 1 definition of "person." Act of June 25, 1948, ch. 645, § 6, 62 Stat. 683, 859. This definition of "person" has remained unchanged since 1948. It was on the books in 1959, the year that Congress amended 28 U.S.C. § 1915(a) to provide that a "person" may proceed *in forma pauperis*. *See* Act of September 21, 1959, Pub. L. No. 86-320, 73 Stat. 590 (amending § 1915(a)). Congress is also presumed to legislate with knowledge of this Court's rules of statutory construction. *McNary v. Haitian Refugee Center, Inc.*, ___ U.S. ___, 111 S.Ct. 888, 898 (1991). Thus, given this Court's prior decisions applying § 1 to other legislation, in amending § 1915(a) by inserting the word "person," "Congress was fully aware that [the statute] would be interpreted to cover artificial entities as well as individuals." *Wilson*, 442 U.S. at 667.

The definition contained in § 1 must be applied whenever Congress enacts a law using the word "person." The only exception to this rule of construction is set forth specifically within the text of § 1: in determining the meaning of a statute, "person" includes associations "unless the context indicates otherwise." As explained in *Monell*, "context" refers to the complete *text* of a statute. In *Monell*, the Court held that the Dictionary Act must be applied unless the statute being construed, *"by its terms,"* calls for a deviation. 436 U.S. at 689 n.53 (emphasis

added).[11] The Court applied the Dictionary Act because the terms of the Civil Rights Act did not call for a restricted interpretation of the word "person." *Id.* at 689-90 n.53.

There are two ways in which the terms of a statute may indicate that "person" means something other than the § 1 definition. First, a statute may expressly provide a different definition for the word "person," and this specific definition will control. Second, the overall text of a statute may indicate that "person" has some unique meaning.

Many statutes fall within the first category. These statutes show that when Congress intends a different meaning of "person" than is provided in § 1, the legislature takes care to craft a specific definition. *See, e.g.*, 11 U.S.C. § 101(41) ("person," in Bankruptcy Code, "includes individual, partnership, and corporation, but does not include governmental unit, . . . "); 12 U.S.C. § 3401(4) ("person," in Right to Financial Privacy Act of 1978, "means an individual or a partnership of five or fewer individuals");[12] 26 U.S.C. § 7655 ("person," in

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[11] The section of the Dictionary Act discussed in *Monell* stated that it was to be applied "unless the context shows that such words were intended to be used in a more limited sense." Act of Feb. 25, 1871, § 2, 16 Stat. 431. Section 1 states that it applies "unless the context indicates otherwise." There is no meaningful difference between these two phrases.

[12] This is a good example of Congress' use of a narrower definition of "person" than is contained in § 1. The Right to Financial Privacy Act protects against the unwanted disclosure of the bank records of a "customer," who is defined as a

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Internal Revenue Code, means "an individual, a trust, estate, partnership, association, company or corporation"); 30 U.S.C. § 1511(d) (in laws relating to geothermal energy, " 'person' includes municipalities, electric cooperatives, industrial development agencies, nonprofit organizations, and Indian tribes, as well as the entities included within such term under section 1 of Title 1"); 31 U.S.C. § 5312(a)(4) (in currency transaction reporting statute, " 'person,' in addition to its meaning under section 1 of title 1, includes a trustee, a representative of an estate and, when the Secretary prescribes, a governmental entity").[13] Because these statutes contain specific definitions of the word "person," the "context" of these statutes indicates clearly that the § 1 definition should not be applied.

The second circumstance in which the "context" indicates that § 1 is inapplicable is where the overall text of a statute reveals some special meaning of a word. This use

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"person." 12 U.S.C. §§ 3401(5), 3402, 3403. Congress defined "person" in § 3401(4) to include only individuals and small partnerships; corporations and associations are not included in the definition. In *Spa Flying Service, Inc. v. United States*, 724 F.2d 95 (8th Cir. 1984), the court of appeals held that because Congress defined "person" narrowly in the Act, the broad definition of "person" in 1 U.S.C. § 1 does not apply. Hence, the Right to Financial Privacy Act does not protect the financial records of a corporation.

[13] *See also Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 47 n.22 (1989) ("Where Congress did intend that [Indian Child Welfare Act] terms be defined by reference to other than federal law, it stated this explicitly").

of context is not unique to § 1; courts often look to the complete text of a statute to give meaning to a word or phrase. In *United States Department of Energy v. Ohio*, 60 U.S.L.W. 4325 (U.S. April 21, 1992), for example, this Court construed the term "sanction." Noting that "[t]he term's context . . . may supply a clarity that the term lacks in isolation," *id.* at 4329 (citing *Shell Oil Co. v. Iowa Department of Revenue*, 488 U.S. 19 (1988)), the Court examined the statute as a whole. The Court drew upon the other usages of the word "sanction" in the same statute and also found significant the placement of the term "sanction" within the overall structure of the statute. *Id.* at 4329-30. Similarly, in *Shell Oil Co.*, this Court assessed the purpose of two subsections of a statute by examining those subsections in the context of the entire section in which they appeared. 488 U.S. at 25-26.

In this case, nothing in the context of § 1915 indicates that "person" must be given a different meaning than is contained in § 1. Person is not given any specific definition in § 1915. Nor does the overall text of § 1915 indicate, explicitly or implicitly, that "person" can mean only a "natural person."[14] Because the context of § 1915 does not establish that "person" has a unique meaning, the definition of "person" contained in § 1 must be applied. Therefore, under unambiguous statutory language, "person" includes associations.

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[14] A statute providing, for example, that "no person shall marry his or her sibling" would, *by its terms*, exclude associations. The context of the statute would call for a different meaning of "person" than is contained in § 1, because only natural persons may marry. But no terms in § 1915 are in any way inconsistent with permitting associations to proceed *in forma pauperis*.

The State nevertheless urges this Court to use the legislative history to § 1915 to construct a different definition for "person." But there is no reason to turn to the legislative history in this case. Courts study legislative history to resolve statutory ambiguity. *Barnhill v. Johnson*, ___ U.S. ___, 112 S.Ct. 1386, 1391 (1992); *Toibb v. Radloff*, ___ U.S. ___, 111 S.Ct. 2197, 2200 (1991). As this Court recently stated:

> [I]n interpreting a statute a court should always turn first to one, cardinal canon before all others. We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there. . . . When the words of a statute are unambiguous, then, this first canon is also the last: "judicial inquiry is complete."

Connecticut National Bank v. Germain, ___ U.S. ___, 112 S.Ct. 1146, 1149 (1992) (quoting *Rubin v. United States*, 449 U.S. 424, 430 (1981); internal citations omitted); *see also Ardestani v. Immigration and Naturalization Service*, ___ U.S. ___, 112 S.Ct. 515, 519 (1991); *Norfolk and Western Railway Co. v. American Train Dispatchers Assoc.*, ___ U.S. ___, 111 S.Ct. 1156, 1163 (1991); *Blum v. Stenson*, 465 U.S. 886, 896 (1984). Other than by referring to a split in authority, the State does not explain how § 1915(a) – when read with § 1 – is in any way ambiguous. Nor does the State explain how the legislative history to § 1915(a) may overcome clear statutory language.[15] Section 1915 is unambiguous, and this Court ought not examine the legislative history.

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[15] Most of the lower court cases upon which the State relies fail to follow established rules of statutory construction.

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B. The legislative history does not provide any basis to disregard unambiguous statutory language.

When the language of a statute is unambiguous, as it is here, there is only one other way in which legislative history may be used. A court may, in very rare instances, look for "clear evidence" that interpreting the statute literally "would thwart the obvious purposes" of the statute. *Mansell v. Mansell*, 490 U.S. 581, 592 (1989); *see also Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982). Put another way, the legislative history may settle the construction of § 1915(a) only if it contains a " 'clearly expressed legislative intention' contrary to [the plain language], which would require [this Court] to question the strong presumption that Congress expresses its intent through the language it chooses." *Immigration and Naturalization Service v. Cardoza-Fonseca*, 480 U.S. 421, 432 n.12 (1987) (citing *United States v. James*, 487 U.S. 597, 606 (1986) and *Consumer Product Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980)). Legislative history

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In each case, the court simply disregards the plain meaning of § 1915(a) in favor of the legislative history. *See FDM Manufacturing Co., Inc. v. Scottsdale Insurance Co.*, 855 F.2d 213, 214 (5th Cir. 1988); *Move Organization v. United States Department of Justice*, 555 F. Supp. 684, 690-92 (E.D. Pa. 1983); *Honolulu Lumber Co. v. American Factors, Ltd.*, 265 F. Supp. 578, 580 (D. Hawaii 1966); *see also Deuterium Corp. v. United States*, 21 Cl.Ct. 132, 136 (1990). Although the district court in *Sears, Roebuck and Co. v. Charles W. Sears Real Estate, Inc.*, 686 F. Supp. 385, 387-88 (N.D.N.Y. 1988), did note the rules of statutory construction, the court erred in holding that § 1 provides merely a permissive and not a mandatory definition.

can rebut this "strong presumption" only in " 'rare and exceptional circumstances.' " *Ardestani*, 112 S.Ct. at 520 (quoting *Rubin v. United States*, 449 U.S. 421, 430 (1981)). *Mansell*, *Ardestani*, *Griffin* and *Cardoza-Fonseca* illustrate just how narrow this use of legislative history must be, for in *none* of these cases did the legislative history permit the Court to ignore the plain language of the relevant statutes. This case does not even come close to presenting the sort of exceptional circumstances that warrant disregarding the language chosen by Congress.

The State's argument focuses upon the legislative history to the 1959 amendment to § 1915(a). First, the State claims that, prior to 1959, § 1915(a) did not permit artificial entities such as associations or corporations to proceed *in forma pauperis*. Petitioners' Brief on the Merits, pp. 11-12. Second, the State asserts that the legislative history is "silent" about whether the 1959 amendment to § 1915 "intended to reverse the pre-1959 interpretation of section 1915(a)." "Surely," the State contends, "such a dramatic reversal in policy requires an explicit disowning," *id.*, p. 15, and the legislative history shows that in amending § 1915(a), Congress considered only the difficulties of indigent aliens. *Id.* The State is wrong on both of these points.

First, contrary to the State's claim, it was unsettled whether artificial entities could proceed *in forma pauperis* prior to 1959. At that time, § 1915(a) provided that a "citizen" could seek *in forma pauperis* status. *See* Act of June 25, 1948, ch. 646, § 1, 62 Stat. 869, 954. The word "citizen" in § 1915(a) was never authoritatively construed

by this Court.[16] Only two courts of appeals ever considered whether an artificial entity could sue *in forma pauperis* under the previous version of § 1915(a), and both of those cases were wrongly decided.

In *Atlantic S.S. Corp. v. Kelley*, 79 F.2d 339, 340 (5th Cir. 1935) and *Quittner v. Motion Picture Producers & Distributors of America, Inc.*, 70 F.2d 331, 332 (2d Cir. 1934), the courts of appeals denied corporations' motions to proceed *in forma pauperis* on the grounds that corporations are not "citizens."[17] Although the Second Circuit cited no authority for its position, the Fifth Circuit erroneously relied in part upon *Bank of United States v. Deveaux*, 5 Cranch 61 (1809). In *Deveaux*, this Court had held that corporations were not "citizens" for the purposes of diversity jurisdiction. *Id.* at 86-87. In 1844, however, this Court reversed its prior decision in *Deveaux* and held that "a corporation . . . doing business in a particular State, is to be deemed to all intents and purposes as a person, . . . capable of being treated as a citizen of that State, as much as a natural person." *Louisville,*

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[16] Prior to 1959, this Court decided several motions by corporations attempting to proceed *in forma pauperis*. *See One, Inc. v. Oleson, Postmaster of Los Angeles*, 353 U.S. 979 (1957); *Brictson Manufacturing Co. v. Close*, 49 S.Ct. 92 (1928). The motions were denied without explanation. In *Roberts v. United States District Court For The Northern District Of California*, 339 U.S. 844 (1950), the Court held that the term "citizen" in § 1915(a) must be defined by federal and not state law. But at no time did this Court determine whether "citizen" included corporations or associations.

[17] *Atlantic* and *Quittner* involve statutes that were later recodified as § 1915(a).

Cincinnati, and Charleston R. Co. v. Letson, 2 How. 497, 558 (1844). As already noted above at page 13, it has long been understood that corporations are to be treated as natural persons for virtually all purposes. *Monell*, 436 U.S. at 687. Thus, the only circuit court decision that cited any authority in construing "citizen" relied in part upon a Supreme Court case that had long been overruled.

Thus, the State erroneously assumes that Congress understood "citizen" in the former version of § 1915(a) to mean something akin to "individual who is a citizen." The State goes on to argue that Congress would not have extended the *in forma pauperis* statute to artificial entities without some indication in the legislative history. Corporations, however, have long been deemed "citizens" and therefore, in 1959, members of Congress may well have believed that at least one form of artificial entity, corporations, could proceed *in forma pauperis*.[18] Thus, there is little basis for the State's position that granting *in forma pauperis* status to a organization represents a radical break from prior practice. It is not at all surprising that the legislative history does not discuss artificial entities and *in forma pauperis* proceedings.

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[18] When it inserted the word "person" in § 1915, Congress knowingly incorporated the definition contained in § 1. If Congress was aware of *Quittner* and *Atlantic S.S. Corp.*, the choice of "person" may reflect an intention to overturn those two cases. If Congress had intended to codify *Atlantic* and *Quittner*, Congress could have easily replaced "citizen" with a term such as "any individual," or "any natural person." *See* Comment, *Proceeding In Forma Pauperis in Federal Court: Can Corporations Be Poor "Persons"?*, 62 Cal. L. Rev. 219, 226 (1974).

Equally meritless is the State's argument that the legislative history of the 1959 amendment affirmatively demonstrates that Congress did *not* intend to grant *in forma pauperis* status to associations. In 1959, Congress replaced the word "citizen" in § 1915(a) with the word "person." Act of September 21, 1959, Pub. L. No. 86-320, 73 Stat. 590. The State places great weight on the fact that the Senate Report accompanying the amendment only addresses the ability of aliens to proceed *in forma pauperis*, and is silent on the issue of whether associations should also be permitted *in forma pauperis* status. *See* S. Rep. No. 947, 86th Cong., 1st Sess. (1959), *reprinted in* 1959 U.S. Code Cong. & Admin. News 2663.[19] The silence in the legislative history is inconsequential. "[T]he absence of legislative history on [the reason for a statutory provision] is immaterial in light of the plain and precise language of the statute; Congress is not required to build a record in the legislative history to defend its policy choices." *Mansell*, 490 U.S. at 592; *see also Toibb*, 111 S.Ct. at 2201 ("[I]t makes no difference whether the legislative history affirmatively reflects [the legislative] intent").

This approach makes good sense, since it is not always possible to glean the intent of Congress from legislative history. In this case, we do not know whether a majority of Members of Congress passed the amendment with the *sole* intent of permitting aliens to proceed *in forma pauperis*.[20] It may well be that several legislators

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[19] *See also* 105 Cong. Rec. 13714 (1959); 105 Cong. Rec. 18909 (1959).

[20] Indeed, we do not even know how many legislators read the Senate Report. *See Wisconsin Public Intervenor v.*

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were motivated to amend § 1915(a) because they wished to permit aliens to proceed *in forma pauperis*. If so, the amendment accomplished everything those legislators desired; substituting "person" for "citizen" succeeded in extending to aliens the right to sue *in forma pauperis*. But it also did more. Under § 1, "person" includes associations as well as aliens and citizens. The State claims that legislators did not consider whether the amendment would permit associations to proceed *in forma pauperis*. Petitioners' Brief on the Merits, p. 15. Even if that assertion were true, it would not be a sufficient reason to disregard the statute. "The fact that Congress may not have foreseen all of the consequences of a statutory enactment is not a sufficient reason for refusing to give effect to its plain meaning." *Union Bank v. Wolas*, ___ U.S. ___, 112 S.Ct. 527, 531 (1991) (citing *Toibb*, 111 S.Ct. 2197 (1991)).

The State's legislative history arguments must therefore be rejected. This Court cannot disavow the language of § 1915 merely because Congress did not repeat

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Mortier, ___ U.S. ___, 111 S.Ct. 2476, 2489 (1991) (Scalia, J., concurring) (noting that Committee action "does not necessarily say anything about what Congress as a whole thought." The members of the Committees represent only a small proportion of each house and, even if they agreed on the meaning of certain legislation, "[i]t is most unlikely that many Members of either chamber read the pertinent portions of the Committee Reports before voting on the bill"); *Green v. Bock Laundry Machine Co.*, 490 U.S. 504, 528 (1989) (Scalia, J., concurring) (finding "no reason to believe that any more than a handful of the Members of Congress" passed a bill on the basis of legislative history or floor debates).

in the legislative history what it said in the statute. Silence cannot establish that the unambiguous language of the statute is "demonstrably at odds with the intentions of its drafters. . . . " *Griffin*, 458 U.S. at 571. Under the clear language of § 1915, associations must be allowed to sue *in forma pauperis*.

C. The Court must construe section 1915(a) to permit associations to proceed *in forma pauperis*; any other construction would present serious constitutional questions.

The First Amendment and the Due Process Clause protect the ability of the members of the Men's Advisory Council to file a federal complaint. What the Council members can do individually they must be permitted to do as a group, for the First Amendment also protects the members' ability to associate for the purposes of litigation. The State's construction of § 1915(a) impermissibly burdens individual members' First Amendment rights. This is another reason to conclude that § 1915 permits indigent associations to proceed *in forma pauperis* in federal court. Any other construction would raise serious constitutional questions.[21]

Whenever possible, this Court should construe a statute to avoid conflicts with the Constitution. *Edward J.*

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[21] These constitutional issues were raised in the court of appeals. *See* Opening Brief of Plaintiff-Appellant, pp. 22-24; Appellees' Brief, p. 8; Reply Brief of Plaintiff-Appellant, pp. 3-6. The Ninth Circuit construed 28 U.S.C. § 1915(a) to include associations and, therefore, did not reach the constitutional claims.

DeBartolo Corp. v. Florida Gulf Coast Building & Construction Trades Council, 485 U.S. 568, 575 (1988); *NLRB v. Catholic Bishop Of Chicago*, 440 U.S. 490, 500 (1979); *Johnson v. Robison*, 415 U.S. 361, 367 (1974). Congress is sworn to uphold the Constitution. This Court "will therefore not lightly assume that Congress intended to infringe constitutionally protected liberties. . . . " *Edward J. DeBartolo Corp., supra*. A statute will be construed to avoid serious constitutional problems unless that construction "is plainly contrary to the intent of Congress." *Id.*; *see also Public Citizen v. United States Department of Justice*, 491 U.S. 440, 466 (1989) ("we are loath to conclude that Congress intended to press ahead into dangerous constitutional thickets in the absence of firm evidence that it courted those perils"); *Catholic Bishop Of Chicago*, 440 U.S. at 500-01 (intent of Congress must be clearly expressed). This Court has previously applied this rule of construction to avoid resolving questions of whether a statute impermissibly burdens the First Amendment right of association. *See, e.g., Eastern R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 136-38 (1961) (construing the Sherman Act to permit two or more people to associate to solicit governmental action, even though that action might produce a restraint upon trade or a monopoly).

Two provisions of the Constitution safeguard the ability of individual members of the Men's Advisory Council to file a federal lawsuit. First, litigation can be "a form of political expression," which is protected by the First Amendment. *NAACP v. Button*, 371 U.S. 415, 429-30 (1963). The First Amendment is implicated when a litigant "[r]esort[s] to the courts to seek a vindication of

constitutional rights." *Id.* at 443-44. *See also In re Primus*, 436 U.S. 412, 428 (1978). Second, "[i]t is now established beyond doubt that prisoners have a constitutional right of access to the courts." *Bounds v. Smith*, 430 U.S. 817, 821 (1977). This right of access applies in both criminal and civil cases. *Id.* at 822-23; *Turner v. Safley*, 482 U.S. 78, 84 (1987) (discussing the right in general); *Wolff v. McDonnell*, 418 U.S. 539, 578-80 (1974) (enforcing the right in a civil case); *Johnson v. Avery*, 393 U.S. 483 (1969) (enforcing the right in a habeas corpus case).[22]

While the United States Constitution protects the ability of individual Council members to file a lawsuit, the First Amendment also protects their right to associate for the purpose of litigation. "[I]mplicit in the right to

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[22] Because of these cases and others, the Petitioners are surely wrong in arguing that "[t]he benefits of in forma pauperis are 'entirely statutory.' " Petitioners' Brief on the Merits, p. 10 n.5 (citations omitted). Had Congress not enacted 28 U.S.C. § 1915(a), the United States Constitution would nevertheless require the federal courts to permit indigents to proceed *in forma pauperis* when those litigants seek to protect constitutional or fundamental rights. *See Bounds*, 430 U.S. at 824-25 (discussing affirmative financial obligations to assure all prisoners meaningful access to the courts); *Boddie v. Connecticut*, 401 U.S. 371, 382-83 (1971) (Due Process Clause requires that indigents be permitted to seek a divorce without paying filing fees; divorce touches a fundamental right, and only the courts can grant a divorce); *see also Washington-Southern Navigation Co. v. Baltimore & Philadelphia Steamboat Co.*, 263 U.S. 629, 634-35 (1924) (construing an admiralty rule so as not to deprive indigent litigants of the right to pursue their claims); *but see United States v. Kras*, 409 U.S. 434, 443-45 (1973) (no right to *in forma pauperis* status in bankruptcy proceedings; bankruptcy is not a fundamental right).

engage in activities protected by the First Amendment [is] a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends." *Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984). A long line of cases from this Court establish that individuals may associate for the purposes of litigation. *See United Transportation Union v. State Bar of Michigan*, 401 U.S. 576, 582-83 (1971); *United Mine Workers of America, District 12 v. Illinois State Bar Assoc.*, 389 U.S. 217, 222-23 (1967); *Brotherhood of Railroad Trainmen v. Virginia State Bar*, 377 U.S. 1, 8 (1964); *NAACP v. Button*, 371 U.S. at 430-31.

The right of the Council members to associate encompasses more than just the right to meet and promote an individual's litigation. The First Amendment protects the ability of a group to take action *as* a group. "[T]he practice of persons sharing common views banding together to achieve a common end is deeply embedded in the American political process." *Citizens Against Rent Control/ Coalition For Fair Housing v. City of Berkeley*, 454 U.S. 290, 294 (1981). In that case, this Court struck down a city ordinance that imposed a limit on contributions to committees formed to support or oppose ballot measures, where there was no such limitation upon individuals acting alone. *Id.* at 296. As the Court noted, there are some activities that are legal if engaged in by one person, yet illegal if performed in concert with others, "but political expression is not one of them." *Id.*; *see also First National Bank of Boston v. Bellotti*, 435 U.S. 765, 777 (1978) (an organization has the same right to engage in speech as an individual).

The right to be heard through an organization must be protected. Freedom of association guarantees the right of the people to make their voices heard. *Citizens Against Rent Control*, 454 U.S. at 295. Effective advocacy "is undeniably enhanced by group association." *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460 (1958). In fact, "the primary reason people join an organization is often to create an effective vehicle for vindicating interests that they share with others." *International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America ("UAW") v. Brock*, 477 U.S. 274, 290 (1986). Group speech provides a distinct and valued voice. Thus, this Court has acknowledged the advantages of suits by associations, both to the individuals represented and to the entire judicial system. *Id.*

There is another reason to protect suits by associations. Government acts may sometimes chill people from pursuing their legal remedies as individuals, but those same people may find strength to vindicate their rights through collective action. *See NAACP v. Button*, 371 U.S. at 434-36; *NAACP v. Alabama ex rel. Patterson*, 357 U.S. at 462-63. In this case, the Men's Advisory Council sought, as part of its Complaint, an order preventing harrassment, inmate transfers, and other forms of retaliation due to the filing of the lawsuit. Complaint, p. 14, ¶ 5; ER. 14. The fear of retaliation – whether or not it is in fact justified – may dissuade inmates from pursuing their administrative and legal remedies. Litigation through an association can serve to vindicate some individuals' rights without exposing them to potential harm.

The First Amendment right of freedom to associate is not, however, absolute; it may be infringed "to serve

compelling [governmental] interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms." *Roberts*, 468 U.S. at 623 (citations omitted). There are no compelling governmental interests that justify denying indigent associations and corporations the right to proceed *in forma pauperis*. The State has attempted to articulate some policy concerns relating to the ability of organizations to litigate in federal court. These policy concerns are addressed in detail in part II of this Argument, below. None of these concerns is compelling and, certainly, none may justify an across-the-board denial of *in forma pauperis* status to all organizations in all circumstances.[23]

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[23] This Court's construction of § 1915(a) will determine whether *any* organization may ever seek *in forma pauperis* status in federal court. Of course, the organization in this case, the Men's Advisory Council, consists of inmates. But that fact should not influence the Court's construction of § 1915(a). Inmates' associational rights cannot be infringed absent a legitimate penological interest. *Turner v. Safley*, 482 U.S. 78, 89 (1987). The State's construction of § 1915(a) would violate the Council members' constitutional rights under even this test. There is no legitimate reason why the Council should receive less protection under the Constitution than other organizations. This is not a case, for example, like *Jones v. North Carolina Prisoners' Labor Union, Inc.*, 433 U.S. 119, 127-28 (1977), where prison staff were concerned that formation of a labor union would increase friction between inmates and staff, and would lead to work stoppages and riots. In this case, the Warden himself created the Men's Advisory Council. The Warden wanted the inmates to have "representation" and "a voice." Complaint, p. 4, ¶ 7; ER. 4. Surely there can be no legitimate reason to still that voice merely because the Warden does not now like what he hears.

The State's construction of § 1915(a) thus raises serious questions of whether the statute impermissibly burdens First Amendment rights. This Court need not, however, resolve these difficult constitutional issues. There is no firm evidence that Congress intended § 1915(a) to burden in any way the ability of individuals to associate. To avoid these constitutional questions, and to protect the fundamental rights of association members, § 1915(a) must be construed to permit organizations to proceed *in forma pauperis*.

II. Policy Considerations Cannot Override The Unambiguous Language Of Section 1915(a).

As discussed above, the court of appeals correctly concluded that the unambiguous language of § 1915(a) allows associations to proceed *in forma pauperis*. The State claims, however, that because of "practical problems of administration," Petitioners' Brief on the Merits, p. 17, associations should be denied what the statute provides. The State's concerns are insubstantial. In any event, this argument is wrong as a matter of law. "Practical problems" do not and cannot justify ignoring unambiguous statutory language.

The State's primary policy argument is that it will be difficult for the federal courts to determine whether an association or other entity is truly indigent. *See* Petitioners' Brief on the Merits, pp. 17-18. But, contrary to the State's claim, federal courts are well-equipped to resolve the question of indigency. A person applying for permission to proceed *in forma pauperis* must submit a financial

affidavit. 28 U.S.C. § 1915(a).[24] Though the district court generally accepts the sworn allegations concerning the movant's financial status "at face value," the court has discretion to "inquire into such allegations and demand more specific information if necessary for a proper assessment of the movant's financial status." *Monti v. McKeon, D.D.S.*, 600 F. Supp. 112, 113 (D. Conn. 1984) (citation omitted), *aff'd mem.*, 788 F.2d 1 (2d Cir. 1985); *see also Williams v. Spencer*, 455 F. Supp. 205, 209 (D. Md. 1978), *aff'd on other grnds*, 622 F.2d 1200 (4th Cir. 1980). The courts of appeals and the Supreme Court may have an easier task of assessing indigency. By the time a case reaches these courts, a court below has likely already ruled upon a previous request for *in forma pauperis* status.[25] At all levels, courts have enormous discretion in

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[24] A false submission exposes the maker of the affidavit to the charge of perjury. "This constitutes a sanction important in protection of the public against a false or fraudulent invocation of the statute's benefits." *Adkins v. E. I. DuPont de Nemours & Co.*, 335 U.S. 331, 338 (1948). Furthermore, the court "may dismiss the case if the allegation of poverty is untrue. . . ." 28 U.S.C. § 1915(d). A judge may also assess costs, at the conclusion of the case, against a litigant who has improperly sought *in forma pauperis* status. *Adkins*, 335 U.S. at 338-39; 28 U.S.C. § 1915(e). Each of these mechanisms is as effective against an organization as it is against an individual.

[25] *See* Sup. Ct. R. 39.1 (motion in this Court shall state "whether or not leave to proceed *in forma pauperis* was sought in any other court and, if so, whether leave was granted"); Fed. R. App. P. 24(a) (litigant that has proceeded *in forma pauperis* in district court may appeal *in forma pauperis* without further authorization, unless the district court certifies that the appeal is not in good faith or the party has the financial ability to pay litigation expenses).

ruling upon *in forma pauperis* motions and may even tailor a payment plan to a litigant's financial situation. *See, e.g., In re Epps*, 888 F.2d 964, 967 (2d Cir. 1989) (approving partial payment plan); *Bryan v. Johnson*, 821 F.2d 455, 457-58 (7th Cir. 1987) (same); *In re Williamson*, 786 F.2d 1336, 1338-41 (8th Cir. 1986) (same).

The courts may use their broad discretion to investigate whether an organization is truly indigent. In his dissent in *S.O.U.P.*, Judge Bazelon identified appropriate criteria to determine whether a non-natural entity may proceed *in forma pauperis*. Generally, the court should examine the nature of the lawsuit and the nature of the litigant. *S.O.U.P.*, 449 F.2d at 1144.

The first consideration is the nature of the lawsuit. Lawsuits raising issues affecting the public interest especially deserve the right to proceed *in forma pauperis*. *See, e.g., River Valley, Inc. v. Dubuque County*, 63 F.R.D. 123, 125 (N.D. Iowa 1974); *Harlem River Consumers Cooperative, Inc. v. Associated Grocers of Harlem, Inc.*, 71 F.R.D. 93, 96 (S.D.N.Y. 1976); *S.O.U.P.*, 449 F.2d at 1143 (Bazelon, C.J., dissenting). Also, where (as here) an organization seeks declaratory or injunctive relief, rather than monetary damages, courts are more inclined to grant *in forma pauperis* status. *See, e.g., River Valley*, 63 F.R.D. at 123; *S.O.U.P.*, 449 F.2d at 1144 (Bazelon, C.J., dissenting); *see also FDM Manufacturing Co., Inc. v. Scottsdale Insurance Co.*, 855 F.2d 213 (5th Cir. 1988).[26]

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[26] The Fifth Circuit in *FDM* determined that a corporation could not file an appeal *in forma pauperis*. The court concluded

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The second consideration is the nature of the litigant. Public-interest, non-profit organizations have been regarded more favorably than profit-making corporations. *See, e.g., River Valley*, 63 F.R.D. at 125; *Harlem River*, 71 F.R.D. at 96; *S.O.U.P.*, 449 F.2d at 1143 (Bazelon, C.J., dissenting). Indigence, of course, is the primary concern. The courts are free to consider a wide range of facts, such as the assets and income of an organization, and the amount of fees facing the litigant. *Harlem River*, 71 F.R.D. at 95-6 (examining the organization); *Adkins*, 335 U.S. at 337 (noting that court may deny *in forma pauperis* motion if litigant unnecessarily increases the costs of litigation).

The State asserts that allowing organizations to proceed *in forma pauperis* would foster the "collusive evasion" of indigency requirements. Petitioners' Brief on the Merits, p. 19. The federal courts are well-equipped to ferret out any such "collusion," should it occur. The courts can ask litigants the appropriate questions to determine whether an *in forma pauperis* application has been filed in good faith.[27] Thus, despite the State's

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that a corporation is not a "person" within the meaning of § 1915(a). Although it did not explicitly address the issue in its opinion, the court may have been influenced by the fact that the corporation was seeking monetary damages. Furthermore, the Fifth Circuit found that the merits of the appeal were frivolous. *FDM*, 855 F.2d at 215.

[27] The courts have not been reticent to undertake this sort of inquiry and to deny *in forma pauperis* status when it appears that an organization is not proceeding in good faith. *See, e.g., Sears, Roebuck and Co. v. Charles W. Sears Real Estate, Inc.*, 686 F.

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alarms, it is a simple matter to determine whether an organization can litigate *in forma pauperis*.[28] The court, if necessary, may conduct a detailed inquiry into an organization and its finances. As the prior decisions demonstrate, federal courts are well-suited to this task.

The other policy concerns raised by the State are equally unavailing and may not, in any event, provide a basis to disregard the unambiguous language of a federal statute.

First, the State claims that allowing organizations to proceed under § 1915(a) will raise difficult questions of

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Supp. 385, 388 (N.D.N.Y.) (refusal to grant *in forma pauperis* status to a corporation wholly owned by one non-indigent individual), *aff'd*, 865 F.2d 22, 23 (2d Cir. 1988); *Honolulu Lumber Co. v. American Factors, Ltd.*, 265 F. Supp. 578, 581 (D. Hawaii 1966) (court was concerned that a large damage award might benefit a small number of stockholders, who may have had the assets to pay court costs); *Deuterium Corp. v. United States*, 21 Cl.Ct. 132, 136 (1990) (the party had already litigated for eight years with its own funds before seeking to proceed *in forma pauperis*).

[28] In this case, for example, the court of appeals found no need to investigate the finances of the Men's Advisory Council or its members. The Warden, one of the defendants in this case, made the Council unable to raise funds. Thus, the court of appeals ruled "not only is the [Council] indigent, but that state of affairs is clearly not due to any effort on the part of its members to obtain the benefits of litigation without bearing the ordinary financial burdens." *Men's Advisory Council*, slip op. at 9499. While the State criticizes the court of appeals for not promulgating some kind of universal "test" for indigency, Petitioners' Brief on the Merits, p. 17, the Ninth Circuit merely exercised appropriate judicial restraint. The court properly refrained from deciding matters that were not before it.

standing. Petitioners' Brief on the Merits, pp. 21-23. But standing has nothing to do with indigency. This Court has already articulated the appropriate tests to determine when an association has standing. In certain circumstances, an organization may sue on its own behalf. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378-79 (1982). It may also have standing to sue on behalf of its members. *See New York State Club Association, Inc. v. City of New York*, 487 U.S. 1, 9 (1988); *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 343 (1977); *Warth v. Seldin*, 422 U.S. 490, 511 (1975). For years, courts have applied the standing rules articulated in these cases. There is no reason why these rules are any more difficult to apply when an organization litigates *in forma pauperis* than when an organization prepays the court fees and costs.[29]

[29] The State also asserts that the Men's Advisory Council has no standing to bring this civil action. Because the district court denied the Council's *in forma pauperis* application, that court never addressed the issue of standing, and standing was not discussed by the court of appeals. Nevertheless, under the three-part test described in *Hunt*, the Council has standing. First, the Council alleged injury to inmates in the specific prison unit that the Council represents. Second, the Council was formed to further the welfare of all inmates in the unit; the lawsuit is germane to the organization's purpose. Third, the nature of the relief sought, the suit does not require the participation of individual inmates.

In arguing that the Council has no standing, the State misapplies the first prong of the *Hunt* test. The State contends that not all of the inmates could sue individually. Petitioners' Brief on the Merits, p. 22. There is, however, no requirement that *all* individuals be able to sue for an organization to have standing in a representative capacity. *See, e.g., UAW v. Brock*, 477 U.S. at 286 (first prong of *Hunt* test met because "at least some" UAW members would have had standing as individuals); *Warth*, 422 U.S. at 511 (the association must claim that its members, "or any one of them," are suffering injury).

Second, the State suggests that group claims should only be litigated as class actions, in part because voluntary associations have "an amorphousness inconsistent with efficient judicial administration." Petitioners' Brief on the Merits, p. 19. Once again, the State's argument addresses the wrong issue. The question in this case is whether *indigent* associations can be denied access to the courts, not whether associations *per se* should be deemed incapable of bringing a lawsuit. Associations may sue in federal court to enforce constitutional or statutory rights. *See* Fed. R. Civ. P. 17(b). In *UAW v. Brock*, 477 U.S. at 288-90, this Court squarely rejected the argument, repeated by the State here, that group claims must be resolved through class actions instead of through suits by organizations. Associations are already frequent federal litigants, and the courts recognize their unique contributions. Associations may bring to the case a reservoir of relevant expertise. *Id.* at 289. It may even be more effective to litigate claims through an association than through a class representative. *Id.* Thus, when people come together under a name and form that identifies collective interests, the only practical judicial policy " 'is to permit the association or corporation in a single case to vindicate the interests of all.' " *Id.* at 290 (quoting *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 187 (1951) (Jackson, J., concurring)).

Third, the State asserts that corporations cannot appear *pro se*, and that allowing organizations to litigate *in forma pauperis* will increase the incidence of organizations litigating *pro se*. Petitioners' Brief on the Merits, pp. 20-21. This confuses two separate questions: who can appear in court and who can represent the parties that

appear in court. Even if, in certain circumstances, an entity cannot represent itself,[30] that is no reason to prevent an indigent entity from coming into court with other representation. An organization may be indigent and yet may still be represented by counsel. Courts and bar groups regularly call upon attorneys to provide *pro bono* representation to individuals and organizations.[31]

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[30] While there may be some general policy requiring corporations to appear through counsel in most circumstances, this policy is by no means absolute. *See, e.g., In re Victor Publishers, Inc.*, 545 F.2d 285 (1st Cir. 1976) (noting that the court, in a prior case, permitted a non-lawyer to represent a corporation); *United States v. Reeves*, 431 F.2d 1187 (9th Cir. 1970) (allowing a partner to appear on behalf of a partnership); *In the Matter of Holliday's Tax Services, Inc.*, 417 F. Supp. 182 (E.D.N.Y. 1976), *aff'd without opinion sub nom. Holliday's Tax Services, Inc. v. Hauptman*, 614 F.2d 1287 (2d Cir. 1979) (permitting an individual to represent a wholly owned corporation); *Matter of Sharon B.*, 72 N.Y.2d 394, 530 N.E.2d 832 (1988) (state law permits non-profit child welfare corporation to appear through officer).

[31] The American Bar Association ("ABA") has led the call for increased *pro bono* representation. Rule 6.1 of the ABA's Model Rules of Professional Conduct provides, in part: "A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means *or to* public service or *charitable groups or organizations*. . . ." *Id.* (emphasis added); *see also Voluntarism: The ABA Spirit*, ABA Annual Report 1983-84 at 7, *reprinted in* 70 ABA Journal (Oct. 1984). Many district courts have adopted plans to assist *pro se* civil litigants to obtain volunteer counsel. *See ABA/BNA Lawyers' Manual On Professional Conduct* 91:6009-10 (1990) (listing districts with such plans).

Moreover, under 28 U.S.C. § 1915(d), a court may formally request counsel to represent a "person" on a *pro bono* basis. *Mallard v. United States District Court For The Southern District Of Iowa*, 490 U.S. 296, 301 (1989). Indeed, in this case, the court of appeals requested that present counsel represent the Men's Advisory Council *pro bono*, pursuant to § 1915(d). Hence, if a court is troubled because an organization has appeared *pro se*, surely the court can take some action more narrowly tailored to the perceived problem. Organizations should not be barred entirely from proceeding *in forma pauperis*.

Fourth, the State claims that the court of appeals decision will cause a radical increase in the number of district court filings and that few of these filings will be meritorious. Petitioners' Brief on the Merits, pp. 23-24. There is no indication, however, that allowing organizations to litigate without fees will result in a large increase in lawsuits. After all, the issue of organizations proceeding *in forma pauperis* reached the courts of appeals only a handful of times since 1959. Moreover, if organizations sue in a representative capacity, there may actually be a *decrease* in filings; one organizational lawsuit may replace many individual suits. Furthermore, the federal court is authorized to dismiss a case brought by an indigent litigant if the court is "satisfied that the action is frivolous or malicious." 28 U.S.C. § 1915(d); *Denton v. Hernandez*, 60 U.S.L.W. 4346, 4347 (U.S. May 4, 1992); *Neitzke v. Williams*, 490 U.S. 319, 324 (1989); *see also* Sup. Ct. R. 39.8; *Kinney v. Plymouth Rock Squab Co.*, 236 U.S. 43, 49 (1915). This measure, among others, "should be adequate to control any docket-management problems that might result from meritless prisoner claims." *Hudson v. McMillian*, ___ U.S. ___, 112 S.Ct. 995, 1004 (1992) (Blackmun, J., concurring);

see also Denton, 60 U.S.L.W. at 4347 (Congress passed § 1915(d) in response to the concern that indigents lack an economic incentive to refrain from filing frivolous lawsuits).

In *Neitzke v. Williams*, 490 U.S. 319 (1989), a case involving the meaning of the term "frivolous" in § 1915(d), this Court recently turned aside the very same arguments that the State presents here. The State of Indiana had urged that the term be construed broadly to "halt the 'flood of frivolous litigation' generated by prisoners. . . . " 490 U.S. at 325 (citation omitted). Justice Marshall, writing for a unanimous Court, rejected this policy argument: "We recognize the problems in judicial administration caused by the surfeit of meritless *in forma pauperis* complaints in the federal courts. . . . " *Id.* at 326 (citation omitted). However, "our role in appraising . . . [§ 1915] is not to make policy, but to interpret a statute." *Id.* Even if Indiana's proposal may be appealing as a way to prune meritless complaints from the federal courts, "as a matter of statutory construction it is untenable." *Id.*

The State's policy concerns are insubstantial. In any event, § 1915(a) is unambiguous. Thus, "as a matter of statutory construction" the State's policy arguments are "untenable." Policy concerns do not and cannot provide any reason to disregard Congress' statute.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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APPENDIX

1 U.S.C. Section 1

§ 1. Words denoting number, gender, and so forth

In determining the meaning of any Act of Congress, unless the context indicates otherwise –

words importing the singular include and apply to several persons, parties, or things;

words importing the plural include the singular;

words importing the masculine gender include the feminine as well;

words used in the present tense include the future as well as the present;

the words "insane" and "insane person" and "lunatic" shall include every idiot, lunatic, insane person, and person non compos mentis;

the words "person" and "whoever" include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals;

"officer" includes any person authorized by law to perform the duties of the office;

"signature" or "subscription" includes a mark when the person making the same intended it as such;

"oath" includes affirmation, and "sworn" includes affirmed;

"writing" includes printing and typewriting and reproductions of visual symbols by photographing, multigraphing, mimeographing, manifolding, or otherwise.

28 U.S.C. Section 1915

§ 1915. Proceedings in forma pauperis

(a) Any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or costs or security therefor, by a person who makes affidavit that he is unable to pay such costs or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that he is entitled to redress.

An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

(b) Upon the filing of an affidavit in accordance with subsection (a) of this section, the court may direct payment by the United States of the expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate in any civil or criminal case, if such transcript is required by the district court, in the case of proceedings conducted under section 636(b) of this title or under section 3401(b) of title 18, United States Code; and (3) printing the record on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title. Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts.

(c) The officers of the court shall issue and serve all process, and perform all duties in such cases. Witnesses

shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases.

(d) The court may request an attorney to represent any such person unable to employ counsel and may dismiss the case if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious.

(e) Judgment may be rendered for costs at the conclusion of the suit or action as in other cases, but the United States shall not be liable for any of the costs thus incurred. If the United States has paid the cost of a stenographic transcript or printed record for the prevailing party, the same shall be taxed in favor of the United States.